Rajasthan High Court
Bhopal Singh And Ors. vs The State Of Rajasthan on 2 August, 2000
Equivalent citations: 2001 CriLJ 912, 2001 (1) WLN 166
Author: N Mathur
Bench: N Mathur, A Singh
JUDGMENT N.N. Mathur, J.

1. By way of this petition under Article 226 of the Constitution, first and second petitioners, the parents of deceased Dr. Bhanwar Singh, who is alleged to have been murdered on 15-3-1987, has challenged the constitutional validity of Sections 225, 301 and 302 of the Code of Criminal Procedure. They claim right to conduct the prosecution against the accused persons by a lawyer of their choice and not by a Public Prosecutor appointed under a spoil system.

2. The few facts in the context of which petitioners claim right to conduct trial are as follows :

The third petitioner, brother of deceased Dr. Bhanwar Singh, lodged a FIR at Police Station, Takhatgarh, District Pali, on 17-3-1987 against Prithvi Raj, Ghanshyam Singh, Bakhtawar Singh, Ladu Singh and one Shri Keshav Singh for the offences under Sections 302, 147, 148, 149, IPC. The police registered FIR No. 18/1987 and proceeded with investigation. After investigation, police submitted a Final Report expressing the opinion that deceased Bhanwar Singhj died in an accident. This was not accepted by the complainant party and, therefore, a protest petition was filed in the Court of M.J.M., Sumerpur. The learned Magistrate directed for further investigation. The police was still of the opinion that it was a case of accident. However, the learned Magistrate did not agree with the police report and he took cognizance against the accused persons namely Ghanshyam Singh, Bakhtawar Singh, Prithvi Raj and Ladu Singh for the offences under Sections 302, 364 and 120-B, IPC. The said order was challenged by the accused persons before this Court by way of filing a petition under Section 482, Cr.P.C. The petition was rejected by the order dated 10-4-1996. However, this Court directed that the learned Magistrate will procure the attendance of the accused persons through bailable warrants. The accused persons appeared before the learned Magistrate and they were released on bail. The learned Magistrate committed the case to the Court of Addl. Sessions Judge, Pali to conduct the trial for the offence under Sections 302, 364 and 120-B, IPC. The order of granting bail was challenged by the complainant party before this Court by way of a petition under Section 482, Cr.P.C. This Court modified the order of the learned Magistrate and directed the accused persons to appear before the trial Court and moved a fresh petition to be decided on merit. The bail application was opposed before the trial Court by the complainant, which was rejected by order of the learned Additional Sessions Judge dated 15-4-97. However, this Court granted bail by order dated 2-5-97. On 15-2-99, at the stage of opening the case for prosecution under Section 225 of the Code of Criminal Procedure, the counsel for the accused persons raised an objection to the effect that the counsel for the complainant cannot argue the case. This objection was supported by the Additional Public Prosecutor. The learned trial Judge considering the provisions of Sections 225, 301 and 302, Cr.P.C. upheld the objection that the complainant party can only be allowed to submit written arguments. At the stage of arguments for framing of charge, a similar objection was raised by the counsel for the accused persons. The objection raised by the accused could not prevail as the learned Additional Public Prosecutor permitted the counsel for the complainant to argue. The

petitioners do not want to be at the mercy of the Public Prosecutor and want a clear direction from this Court that they should be permitted to prosecute the accused persons as of right. In this context, the petitioners have challenged the constitutional validity of Sections 225, 301(2) and 302, Cr.P.C.

3. It is contended by Mr. S.D. Rajpurohit, learned counsel for the petitioners, that in a spoil system, the Public Prosecutors are mostly incompetent as they are appointed by the Government on party line. It is also submitted that mostly, the public prosecutors do not function with requisite detachment and they are influenced by the politicians and police officers and they are also susceptible to misuse and corruption. It is also submitted that any person, who has suffered any loss or injury by reason of the act of the accused persons has inherent right to prosecute such accused persons through a competent lawyer of his choice. It is, thus, submitted that a right of life under Article 21 of the Constitution of India includes right to prosecute the accused at his hand, when a person has suffered any loss or injury. Sections 225, 301 and 302 of the Code of Criminal Procedure, which completely deprives a complainant to prosecute the accused, at whose hand he has suffered any loss or injury, are unconstitutional being violative of Articles 14 and 21 of the Constitution of India.

4. We have given thoughtful consideration to the contention of the learned counsel, in the backdrop of the legislative scheme of prosecution under the Code of Criminal Procedure.

5. Blackstone divided wrongs into private and public. The former are termed civil injuries; the latter, crimes, because a crime is an act harmful to the public. Crime is nothing but an offence, and an offence is an act or omission which is made punishable by the law in force. Such offences are investigated, enquired-into, tried and otherwise dealt-with in accordance with the provisions of the Code of Criminal Procedure. Any person can set this procedure into motion by submitting a report before the police officer or before the Court. The Code of Criminal Procedure divides offences into two parts namely cognizable and non-cognizable. The police is given the power under Chapter XII of the Code of Criminal Procedure to investigate the cognizable offences. The non-cognizable offences can also be investigated by the police on a direction given by the Magistrate under Section 156(3). Section 190 of the Code of Criminal Procedure empowers the Court to take cognizance on complaint by a private person or on a police report in case of cognizable offence and non-cognizable offence, investigate under Section 156(3) or on complaint by a public servant or on other information and knowledge of the Magistrate.

6. In all cases of cognizable offences, the trial is conducted by the Public Prosecutor. Section 24 of the Code of Criminal Procedure provides the manner of appointment of the Public Prosecutor.

Section 24 reads as follows :

Public Prosecutors.

24. (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other

proceeeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors, for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district :

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under Sub-section (4).

(6) Notwithstanding anything contained in Sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre :

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under Sub-section (4).

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of Sub-section (7) and Sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

Thus, it is evident that the Public Prosecutors either in the High Court or in the District Court stem from statutory provisions contained in Section 24 of the Code of Criminal Procedure. There exists a difference in the manner of appointment of Public Prosecutor, in High Court and District Court. In case of Public Prosecutor in the district Courts, the vacancies are notified, the applications are invited from among the lawyers and the District Magistrate, after consuluting the Sessions Judge, sends the recommendation to the State Government, which appoints the Public Prosecutors in the District. Thus, there cannot be any doubt that there is a public element attached to the office or the post of Public Prosecutor appointed under Section 24 CrPC. They hold an office or statutory post, which may be different from the other posts held by other lawyers as panel lawyer, standing counsel etc. They hold a high public office of trust under the State. It is an office of responsibility more important than many other officers because Public Prosecutor is not only required to prosecute the case with detachment on the one hand and yet with vigour on the other.

7. With respect to the independence of the Pubilc Prosecutor, the Apex Court in Hitendra Vishnu Thakur v. State of Maharashtra reported in AIR 1994 SC 2623 : (1995 Cri LJ 517) has observed that the Public Prosecutor is an important office of the State Government and he is an independent statutory authority. Code of Criminal Procedure empowers the Public Prosecutor to withdraw the prosecution of a case on the directions of the State Government. Even in the case of withdrawal of prosecution, in spite of direction given by the State Government, the Public Prosecutor is required to apply his mind and take an independent decision (Subhash Chandra v. State, AIR 1980 SC 423 : (1980 Cri LJ 324). Because of such a stature of the Public Prosecutor, the mandate as contained in Section 225 of the Code of Criminal Procedure is that every trial before the Sessions Court shall be conducted by a Public Prosecutor. A Public Prosecutor, incharge of the case, is not required to produce a written authority like any other lawyers for appearing and pleading the case under enquiry, trial or appeal (Section 301 CrPC). Sub-Clause (2) of Section 301 of the Code of Criminal Procedure gives some relaxation for entry of the complainant in a case conducted by the Public Prosecutor to the extent that he may, under the directions of the Public Prosecutor and with permission of the Court, submit written arguments after the evidence is closed in a case. A further relaxation is made under Section 302, CrPC when the Magistrate inquiring into or trying the case, is vested with discretion to permit the prosecution to be conducted by a counsel engaged by the complainant under the guidance of the public prosecutor. It is, thus, evident that the scheme of the administration of the criminal justice is that primary responsibility of prosecuting cognizable offence is on the executive autohrities and, therefore, the Public Prosecutor, though an executive Officer in larger sense, is also an officer of the Court. The Apex Court in State of Bihar v. Ram Naresh reported in AIR 1957 SC 389 : (1957 Cri LJ 567) has observed that a public prosecutor is bound to assist the Court with his fairly considered view and the Court is entitled to take the benefit of fair exercise of his functions. The Apex Court again in Subhash Chandra v. State reported in AIR 1980 SC 423 : (1980 Cri LJ 324) has observed that a public prosecutor acts as limb of judicative process. He must work as a minister of justice assisting the State in administration of justice and not as a representative of the party.

8. Thus, in all prosecutions, the State is the prosecutor and a proceeding is always treated as proceeding between the State and he accused. The anxiety of the State is to secure peace and security and has a right to prosecute. The complainant has no independent right to have guilty

person punshed. It is felt necessary in the larger public interest to save the people from prosecution by a private party. Once the offence is committed, it is not against an individual but is against the entire Society. Thus, of the outcome of a trial, it is not only the complainant, who is interested but it is the public at large, who is concerned. It has taken human civilisation centuries to reach this stage when the modern State has come to acquire a monopoly to adjudicate and use force when fights between the private individuals take place. This is why justice is represented by scales of sword. The society has realised that he privilege of the prosecution should be of the State alone because it is neutral interceptor as it never loses and never wins. The Court calls for exercise and hence the conduct of the prosecution is entrusted to the prosecutors appointed by the State Govt. This will save innocent persons from vexatious prosecution and also harassment during the trial. Complainant has also been given limited right to speak during trial by way of submitting written arguments under Section 301(2) and assist the public prosecutor through private counsel with permission of the Court if the facts so permit under Section 302 CrPC. Thus, the foundation of Sections 225, 301 and 302 of the Code of Criminal Procedure is a well reasoned public policy. A balance is struck between public interest and private interest that while keeping the Management of the prosecution with public prosecutor, provision is made to take care of complainant's view, on legal and factual aspect. Such a provision cannot be struck down simply because somebody thinks that the appointment of public prosecutors is not on the basis of merit or they are susceptible to misuse and corruption. If in a individual case, there is any grievance against the public prosecutor, the appropriate remedy is to lodge a complaint against him, before the appropriate authority.

9. Dealing with the contention of violation of right of livelihood, the aforesaid discussion shows that impugned provisions are in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. Construing a right to prosecute a person during trial, will defeat the purpose sought to be achieved by Article 21 of the Constitution. It is in the larger public interest that the prosecution is conducted by an independent person like the public prosecutor.

Recently, the Apex Court in State of Himachal Pradesh v. Raja Mahendra Pal reported in AIR 1999 SC 1786, has criticised the tendency of unnatural expansion of fundamental rights guaranteed under Article 21 of the Constitution of India. The Apex Court observed thus-

The violation of the right to livelihood is required to be remedied. But the right to livelihood as contemplated under Article 21 of the Constitution cannot be so widely construed which may result in defeating the purpose sought to be achieved by the aforeasid Article. It is also true that the right to livelihood would include all attributes of life but the same cannot be extended to the extent that it may embrace or take within its ambit all sorts of claim relating to the legal or contractual, rights of the parties completely ignoring the person approaching the Court and the alleged violation of the said right.

10. The contentions raised by the petitioners being devoid of merit, are rejected. We uphold the constitutional validity of Sections 225, 301 and 302 of the Code of Criminal Procedure.

11. Consequently, we find no force in the writ petition and the same is hereby dismissed in limine.